

ANNUAL REPORT OF THE JUDICIAL OFFICER

Fiscal Year 2008

The Judicial Officer issues the final decision for the Secretary of Agriculture in all cases appealed from initial decisions of USDA's administrative law judges (ALJs). The cases arise under more than 20 statutes administered by the Secretary of Agriculture. During Fiscal Year 2008, the Judicial Officer issued cases arising under the Agricultural Marketing Agreement Act; the Animal Welfare Act; the Federal Meat Inspection Act; the Packers and Stockyards Act; the Perishable Agricultural Commodities Act; and the Poultry Products Inspection Act. In addition, the Judicial Officer prepares draft decisions for the Assistant Secretary for Civil Rights under section 741 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (7 U.S.C. § 2279 note). The Judicial Officer also rules on motions filed by parties to proceedings and questions submitted by ALJs and issues reparation orders for money damages under the Packers and Stockyards Act and the Perishable Agricultural Commodities Act. Appeals from the Judicial Officer's decisions lie primarily to the United States Courts of Appeals, but, under some statutes, appeals lie to the United States District Courts. The Department has no right of appeal from a decision by the Judicial Officer.

The Office of the Judicial Officer is staffed by three persons: the Judicial Officer, an attorney examiner, and a legal technician, who also serves as secretary, paralegal, and administrative assistant.

The following three tables provide an indication of the production of the office and the direction of the backlog in the office. I have not included in these tables the two Packers and Stockyards Act reparation decisions and the 360 Perishable Agricultural Commodities Act reparation decisions issued by the Judicial Officer in FY 2008.

CASES RECEIVED – DECIDED – PENDING

	FY 06	FY 07	FY 08
Cases Pending Beginning of Year	8	5	12
Cases Received During Year	43	41	26
Cases Decided During Year	46	34	30
Cases Pending End of Year	5	12	8

NUMBER OF CASES DECIDED BY JUDICIAL OFFICER

Fiscal Year	No.	Fiscal Year	No.
1979	26	1995	36
1980	21	1996	34
1981	29	1997	43
1982	33	1998	48
1983	34	1999	45
1984	26	2000	35
1985	50	2001	30
1986	42	2002	30
1987	36	2003	29
1988	40	2004	37
1989	43	2005	53
1990	42	2006	46
1991	56	2007	34
1992	62	2008	30
1993	53		
1994	51		

INTERVAL BETWEEN REFERRAL TO JO AND JO DISPOSITION

Fiscal Year	Median Interval	Longest Interval	Number of Cases Over 4 Months	Number of Cases Over 8 Months
1996	1 mo.	7 mo.	10	0
1997	2 mo. 2 wk.	1 yr. 3 wk.	13	8
1998	2 mo.	2 yr. 3 mo.	3	1
1999	1 mo.	6 mo. 2 wk.	2	0
2000	3 wk.	6 mo. 2 wk.	1	0
2001	1 wk.	2 mo.	0	0
2002	2 wk.	3 mo. 2 wk.	0	0
2003	1 wk.	11 mo. 2 wk.	3	3
2004	1 wk.	1 yr. 5 mo.	4	4
2005	1 wk. 3 da.	1 yr. 6 mo.	3	1
2006	2 wk.	1 yr. 2 wk.	6	4
2007	1 mo. 3 wk.	11 mo. 1 wk.	6	2
2008	2 wk.	1 yr. 7 mo.	10	7

A list of the pending cases referred to the Judicial Officer is attached as Appendix 1; a list of decisions issued by the Judicial Officer, which were appealed in FY 2008, is attached as Appendix 2; and a list of Court dispositions is attached as Appendix 3.

APPENDIX 1

September 30, 2008

PENDING CASES APPEALED TO THE JUDICIAL OFFICER

1. Mark McDowell, et al., Petitioners
AMA PPRCIA Docket No. 05-0001 – **Ref to JO 1/10/07**
Davenport, ALJ – **D&O 10/24/06**
Rastgoufard, OGC
Pets' response to R's appeal 1/9/07
R's appeal 12/15/06
2. Lorenza Pearson, dba L&L Exotic Animal Farm, Resp.
AWA 02-0020
Lorenz Pearson, Pet.
AWA D-06-0002 – **Ref to JO 10/19/07**
Palmer, ALJ – **D&O 4/6/07**
Martin, OGC
R's opp. to C's cross-appeal 10/19/07
C's reply brief in opp. to R's appeal and cross appeal 8/21/07
R's brief in support of appeal & appeal pet 7/23/07
3. Tuscany Farms, Inc., Resp.
PACA D-04-0015
Joe Genova & Associates, Inc., Resp.
PACA D-06-0016
Gencon Consulting, Inc., Resp
PACA D-06-0017
Joe A. Genova, Pet.
PACA APP 06-0005
Nicole A. Wesner, Pet.
PACA APP 06-0006 – **Ref to JO 12/4/07**
Hillson, ALJ – **D&O 8/24/07**
Paul & Gordy, OGC
C's reply to appeal of decision 12/3/07
Appeal of decision 10/26/07
4. Lion Raisins, Inc., et al., Resps.
I&G 04-0001 – **Ref to JO 6/5/07**
Davenport, ALJ – **D&O 6/9/06**
Carroll, OGC
C's response to Rs' Motion to Reopen hearing 6/4/07
Rs' Motion to Reopen hearing 4/5/07
C's response to Rs' appeal 9/26/06
Rs' appeal & request for oral argument 7/14/06

5. Amarillo Wildlife Refuge, Inc., Resp.
AWA 07-0077 – **Ref to JO 5/14/08**
Juarez, OGC
Palmer, ALJ – **D&O 3/24/08**
C's response to R's appeal 5/14/08
R's appeal 4/24/08
6. Wilkinson v. Schafer
SOL 07-0196 (CR) – **Ref to JO 7/31/08**
Hillson, ALJ
7. Wyoming Department of Parks & Cultural Resources, et al., Resps.
AWA 07-0022 – **Ref to JO 9/10/08**
Palmer, ALJ – **D&O 8/23/07**
Rs' response to C's Cross-Appeal 11/5/07
C's reply brief in Opp. to Rs' appeal petition & cross-appeal 10/15/07
Rs' appeal 9/24/07
8. Loreon Vigne, Resp.
AWA D-07-0174 – **Ref to JO 9/26/08**
Davenport, ALJ – **D&O 7/7/08**
C's response to R's appeal 9/26/08
R's appeal 8/6/08

APPENDIX 2

JUDICIAL OFFICER'S DECISIONS APPEALED

Fiscal Year 2008

1. *In re Amalgamated Sugar Company, LLC*, 65 Agric. Dec. 252 (2006), *aff'd*, 2007 WL 2612675 (2007), *appeal docketed*, No. 07-35971 (9th Cir. Oct. 22, 2007).
2. *In re Robert Raymond Black II*, __ Agric. Dec. __ (Aug. 30, 2007), *appeal docketed sub nom. Derickson v. Dep't of Agric.*, No. 07-4158 (6th Cir. Sept. 21, 2007).
3. *In re Coastal Bend Zoological Association*, __ Agric. Dec. __ (Jan. 24, 2008), *appeal docketed sub nom. Brock v. U.S. Dep't of Agric.*, No. 08-60247 (5th Cir. Mar. 24, 2008).
4. *In re Marvin Horne*, __ Agric. Dec. __ (Feb. 4, 2008), *appeal docketed*, No. 1:08-cv-00402 OWW-SMS (E.D. Cal. Mar. 18, 2008).
5. *In re Octagon Sequence of Eight, Inc.*, __ Agric. Dec. __ (Oct. 2, 2007), *appeal docketed sub nom. Ramos v. U.S. Dep't of Agric.*, No. 08-10236-D (11th Cir. Jan. 9, 2008).
6. *In re Todd Syverson*, __ Agric. Dec. __ (Aug. 27, 2008), *appeal docketed*, No. 08-3245 (Sept. 25, 2008).

APPENDIX 3

COURT DISPOSITIONS

Fiscal Year 2008

A. Courts affirmed the following decisions issued by the Judicial Officer.

1. *In re B.T. Produce Co.*, __ Agric. Dec. ____ (May 4, 2007), *aff'd*, Nos. 07-1240, 07-1241, 07-1242 (D.C. Cir. Sept. 15, 2008).
2. *In re Donald R. Beucke (I)*, __ Agric. Dec. ____ (Sept. 28, 2006), *aff'd*, No. 06-75358 (9th Cir. Aug. 6, 2008).
3. *In re Jewel Bond*, 65 Agric. Dec. 92 (2006), *aff'd per curiam*, 2008 WL 1868077 (8th Cir. Apr. 29, 2008).
4. *In re KOAM Produce, Inc.*, 65 Agric. Dec. 589 (2006), *aff'd*, 269 F. App'x 35 (2d Cir. 2008).
5. *In re Perry Lacy*, __ Agric. Dec. ____ (June 29, 2007), *aff'd*, 278 F. App'x 616 (6th Cir. 2008).
6. *In re Lion Raisins, Inc.*, 64 Agric. Dec. 27 (2005), *aff'd in part and rev'd in part*, No. 1:05-CV-00640-OWW-SMS, 2008 WL 783337 (E.D. Cal. March 20, 2008).

B. Court reversed the following decision issued by the Judicial Officer.

1. *In re Donald R. Beucke (II)*, __ Agric. Dec. ____ (Nov. 8, 2006), *rev'd*, No. 07-70033 (9th Cir. Aug. 6, 2008).

C. The Supreme Court of the United States denied certiorari in the following decisions issued by the Judicial Officer.

1. *In re Coosemans Specialities, Inc.*, 65 Agric. Dec. 539 (2006), *aff'd*, 482 F.3d 560 (D.C. Cir.), *cert. denied*, 128 S. Ct. 628 (2007).
2. *In re G&T Terminal Packaging Co.*, 64 Agric. Dec. 1839 (2005), *aff'd*, 468 F.3d 86 (2d Cir. 2006), *cert. denied*, 128 S. Ct. 355 (2007).
3. *In re Kleiman & Hochberg, Inc.*, 65 Agric. Dec. 482 (2006), *aff'd sub nom Hirsch v. U.S. Dep't of Agric.*, 497 F.3d 681 (D.C. Cir. 2007), *cert. denied sub nom. Hirsch v. Dep't of Agric.*, 128 S. Ct. 1748 (D.C. Cir. 2008).